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2007 SEP 20 P 3: 16

RICHARD W. WIEKING
CLERK
U.S. DISTRICT COURT
NO. DIST. OF CAL. S.J.

8 Attorneys for Defendant
9 Metropolitan Life Insurance Company

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA

12 C07 04867

HRL

13 LADONNA GEDECKE,

CASE NO.:

14 Plaintiff,

CERTIFICATE OF SERVICE OF NOTICE
TO ADVERSE PARTY OF REMOVAL OF
ACTION TO FEDERAL COURT

15 vs.

16 METROPOLITAN LIFE INSURANCE
17 COMPANY, and DOES 1 through 10,
18 inclusive,

19 Defendants.

Complaint Filed: June 13, 2007

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1 I, Melanie Tavera, certify and declare:

2
3 1. I am over the age of 18 years and am not a party to this action. My business address is
4 Barger & Wolen LLP, 633 W. Fifth Street, Los Angeles, California 90071, which is located in the
5 city, county and state where the mailing described below took place.

6
7 2. On September 20, 2007, I mailed (via First Class United States Mail) a copy of the
8 Notice to Adverse Party of Removal of Action to Federal Court dated September 20, 2007 (a copy
9 of which is attached to this certificate as Exhibit A), to counsel for Plaintiff.

10
11 I declare under penalty of perjury under the laws of the United States and certify that the
12 foregoing is true and correct. Executed this 20th day of September, 2007 at Los Angeles, California.

13
14 
15 MELANIE A. TAVERA

Royal F. Oakes (080480), roakes@barwol.com
Michael A. S. Newman (205299), mnewman@barwol.com
BARGER & WOLEN LLP
633 West Fifth Street, 47th Floor
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Attorneys for Defendant
Metropolitan Life Insurance Company

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

LADONNA GEDECKE,

Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE
COMPANY, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO.: 107CV-087783

NOTICE TO ADVERSE PARTY OF
REMOVAL OF ACTION TO FEDERAL
COURT

Complaint Filed: June 13, 2007

1 TO PLAINTIFF, LADONNA GEDECKE, AND HER ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that Defendant Metropolitan Life Insurance Company seeks
3 removal of the civil action, Case No. 107CV-087783, from the Superior Court of the State of
4 California, County of Santa Clara, to the United States District Court for the Northern District of
5 California. A copy of the Notice of Removal (without exhibits) filed with the United States District
6 Court, Northern District of California on September 20, 2007, is attached hereto as Exhibit "A."
7

8 Dated: September 20, 2007

BARGER & WOLEN LLP

9
10 By: 

11 ROYAL F. OAKES
12 MICHAEL A. S. NEWMAN
13 Attorneys for Defendant Metropolitan
14 Life Insurance Company
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Royal F. Oakes (080480), roakes@barwol.com
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Facsimile: (213) 614-7399

Attorneys for Defendant
Metropolitan Life Insurance Company

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LADONNA GEDECKE,

Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE
COMPANY, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO.:

NOTICE OF REMOVAL; DECLARATION
OF MICHAEL A. S. NEWMAN

Complaint Filed: June 13, 2007

1 TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
2 CALIFORNIA:

3
4 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. Section 1446, Defendant Metropolitan
5 Life Insurance Company ("MetLife") hereby removes Case No. 107CV-087783 from the Superior
6 Court of the State of California, County of Santa Clara to this Court. Removal of this action is
7 proper for the following reasons.

8
9 1. MetLife is a non-fictitiously named defendant in the civil action filed on or about
10 June 13, 2007, in the Superior Court of the State of California, County of Santa Clara, entitled
11 "LaDonna Gedecke, Plaintiff v. Metropolitan Life Insurance Company, and Does 1 through 10,
12 inclusive, Defendants," Case No. 107CV-087783. A true and correct copy of the Complaint is
13 attached as Exhibit "A," to the Declaration of Michael A. S. Newman ("Newman Decl.").¹

14
15 **TIMELINESS**

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17 2. The first date upon which MetLife received a copy through service of the Complaint
18 and other documents in this case was August 22, 2007, when Plaintiff LaDonna Gedecke
19 ("Plaintiff") served MetLife.

20
21 3. This removal is timely under 28 U.S.C. Section 1446(b), in that removal is sought
22 within thirty days after service of the Summons and Complaint, which was the initial receipt by
23 MetLife of a copy of the initial pleadings in this action.

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28 ¹ The Newman Declaration appears at the end of this document.

DIVERSITY JURISDICTION

4. This case is a civil action for which this Court has jurisdiction under the provisions of 28 U.S.C. Section 1332, and is one that may be removed to this Court by MetLife pursuant to provisions of 28 U.S.C. Section 1441(b), in that it is a civil action between citizens of different states, and the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, as set forth more fully below.

5. Plaintiff alleges that, at all relevant times, she was a resident of County of Santa Clara, California (Exhibit "A," ¶ 1), and that she was employed by the State of California (at the State Compensation Insurance Fund) from 1972 to 1981 and from 1983 to the present. (Exhibit "A," ¶ 6.) She is suing based on the denial of policy benefits under a group disability plan issued by MetLife to the State of California. Plaintiff is a resident and citizen of the State of California (Exhibit "A," ¶¶ 1, 6.).

6. A corporation is deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business. *United Computer Systems, Inc. v. AT&T Corp.*, 298 F. 3d 756, 763 (9th Cir. 2002). MetLife is a corporation organized and existing under the laws of the State of New York, having its principal place of business therein. (Newman Decl.), ¶ 3, Exh. "B.") Plaintiff further admits that MetLife is "domiciled" in the State of New York. (Complaint, ¶ 2.) MetLife's principal place of business is also New York. A corporation has only one principal place of business. *See* 28 U.S.C. Section 1332(c)(1); *see also United Computer Systems, Inc. v. AT&T Corp.*, 298 F. 3d 756, 763 (9th Cir. 2002). The principal place of business as the state where a "substantial predominance" of corporate activity takes place, *or* where the majority of its executive and administrative functions are performed. *United Computer Systems, Inc., supra* at 763. That both the substantial prominence of MetLife's corporate activity takes place in New York, *and* the majority of its executive and administrative functions are performed in New York is beyond question. (Newman Decl., Exh. "B.") At all times pertinent, the

1 citizenship status of MetLife as a citizen of the State of New York has remained the same.
 2 Accordingly, at the time of the filing of the complaint and the filing of this Notice of Removal,
 3 MetLife was and is a citizen of the State of New York. (Newman Decl., Exh. "B".) Furthermore,
 4 MetLife's citizenship is attested to in numerous district court opinions. *Vega-Muniz v. Metro. Life*
 5 *Ins. Co.*, 278 F. Supp. 2d 146, 147 (D.P.R. 2003) ("Metlife is a corporation organized and existing
 6 under the laws of the State of New York with its principal place of business in New York.");
 7 *Morgan v. Metro. Life Ins. Co.*, 2003 U.S. Dist. LEXIS 6540, *2 (E.D. La. 2003) ("MetLife is a
 8 New York Corporation having its principal place of business in New York."); *Stensrud v. Metlife*
 9 *Investors Ins. Co.*, 29 Employee Benefits Cas. (BNA) 1190, *5 (N.D. Ill. 2002) ("MetLife is a New
 10 York corporation with its principal place of business in New York."); *De Dios Cortes v. Mellife,*
 11 *Inc.*, 122 F. Supp. 2d 121, 124 (D. Puerto Rico 2000) ("MetLife is a corporation organized and
 12 existing under the laws of the State of New York with its principal place of business in New
 13 York.").

14
 15 7. Based on Paragraphs 4 through 6 above, there is complete diversity of citizenship among
 16 Plaintiff and MetLife.

17 18 AMOUNT IN CONTROVERSY

19
 20 8. Defendants are not required to prove in absolute terms that more than \$75,000.00 is
 21 at issue. Rather, a "defendant must provide evidence establishing that it is 'more likely than not'
 22 that the amount in controversy exceeds" \$75,000. *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d
 23 398, 403 (9th Cir. 1996). Here, there is no question that the amount in controversy well exceeds
 24 \$75,000.

25 9. In her Complaint, Plaintiff purports to seek "benefits due under the LTD policy at the
 26 rate of \$3,556.80 per month, starting on October 7, 2004, and continuing through the date of
 27 judgment" (Complaint, page 5, lines 15-16), an amount in excess of \$120,000. In addition, Plaintiff
 28 seeks punitive damages and attorneys' fees (Complaint, page 5: lines 21-23). *Conrad v. Hartford*

1 *Accident & Indem. Co.*, 994 F. Supp. 1196, 1198 (N.D. Cal. 1998) (finding that special and general
 2 damages, attorneys' fees, and punitive damages are included in the calculation of the amount in
 3 controversy). Although MetLife denies that it is in fact liable for any part of these amounts, it is
 4 beyond question that the amount in controversy exceeds \$75,000.

5
 6 **PROCESS**
 7

8 10. Exhibit "A" attached hereto constitutes the entire process and pleadings filed in the
 9 state court action.


10
 11 11. This Notice of Removal is being filed without prejudice to the objections and
 12 defenses of MetLife.

13
 14 12. Written notice of the filing of this Notice of Removal has been given to all adverse
 15 parties, and a copy has been filed with the Clerk of the Superior Court of the State of California,
 16 County of Santa Clara, in accordance with the provisions of 28 U.S.C. Section 1446(d).

1 WHEREFORE, MetLife prays that the above action pending in the Superior Court of
2 California for the County of Santa Clara be removed from that court to this Court.

3
4 Dated: September 20, 2007

BARGER & WOLEN LLP

5
6 By: 
7 ROYAL F. OAKES
8 MICHAEL A. S. NEWMAN
9 Attorneys for Defendant Metropolitan
10 Life Insurance Company
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1 **DECLARATION OF MICHAEL A. S. NEWMAN**

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3 I, Michael A. S. Newman, declare as follows:

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5 1. I am an attorney licensed to practice in this Court and all the courts in the State of

6 California, and am an associate with Barger & Wolen, LLP, counsel of record for Metropolitan Life

7 Insurance Company ("MetLife"), defendant in this action. I am one of the attorneys with

8 responsibility for the handling of this matter. I have personal knowledge of the matters set forth

9 below, and if necessary could competently testify as to such matters.

10

11 2. Attached hereto as Exhibit "A" is a true and correct copy of the Summons and

12 Complaint in the above-referenced action. Attached hereto as Exhibit "B" is a true and correct copy

13 of the relevant portion of MetLife's profile in the 2006 AM Best's Insurance Report, which shows

14 the principal place of business in New York, and that it is incorporated in New York.

15

16 I declare under the laws of the State of California and the United States that the

17 foregoing is true and correct.

18

19 Executed this 22 day of September 2007, at Los Angeles, California.

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22 MICHAEL A. S. NEWMAN

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: Barger & Wolen LLP, 633 West Fifth Street, 47th Floor, Los Angeles, California 90071-2043.

On September 20, 2007, I served the foregoing document(s) described as NOTICE OF REMOVAL; DECLARATION OF MICHAEL A.S. NEWMAN on the interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope addressed as stated in the attached mailing list.

Charles B. Perkins
Flynn, Rose & Perkins
59 North Santa Cruz Avenue, Suite Q
Los Gatos, California 95030
Telephone No.: (408) 399-4566
Facsimile No.: (408) 399-6683
E-mail: cbperk@earthlink.net

Counsel for Plaintiff
LADONNA GEDECKE

☒ BY MAIL

☒ I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ BY PERSONAL SERVICE

☐ I caused such envelope to be delivered to a commercial messenger service with instructions to personally deliver same to the offices of the addressee on this date.

☐ BY FACSIMILE

☐ By transmitting an accurate copy via facsimile to the person and telephone number as follows: Charles B. Perkins (Fax No. 408-399-6683)

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. Executed at Los Angeles, California on September 20, 2007.

MELANIE A. TAVERA
(Name)


(Signature)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: Barger & Wolen LLP, 633 West Fifth Street, 47th Floor, Los Angeles, California 90071-2043.

On September 20, 2007, I served the foregoing document(s) described as NOTICE TO ADVERSE PARTY OF REMOVAL OF ACTION TO FEDERAL COURT on the interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope addressed as stated in the attached mailing list.

Charles B. Perkins
Flynn, Rose & Perkins
59 North Santa Cruz Avenue, Suite Q
Los Gatos, California 95030
Telephone No.: (408) 399-4566
Facsimile No.: (408) 399-6683
E-mail: cbperk@earthlink.net

Counsel for Plaintiff
LADONNA GEDECKE

☒ **BY MAIL**

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☐ **BY FACSIMILE**

☐ By transmitting an accurate copy via facsimile to the person and telephone number as follows: Charles B. Perkins (Fax No. 408-399-6683)

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed at Los Angeles, California on September 20, 2007.

MELANIE A. TAVERA
(Name)

Melanie Tavera
(Signature)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: Barger & Wolen LLP, 633 West Fifth Street, 47th Floor, Los Angeles, California 90071-2043.

On September 20, 2007, I served the foregoing document(s) described as **CERTIFICATE OF SERVICE OF NOTICE TO ADVERSE PARTY OF REMOVAL OF ACTION TO FEDERAL COURT** on the interested parties in this action by placing ☐ the original ☒ a true copy thereof enclosed in sealed envelope addressed as stated in the attached mailing list.

Charles B. Perkins
Flynn, Rose & Perkins
59 North Santa Cruz Avenue, Suite Q
Los Gatos, California 95030
Telephone No.: (408) 399-4566
Facsimile No.: (408) 399-6683
E-mail: cbperk@earthlink.net

Counsel for Plaintiff
LADONNA GEDECKE

☒ **BY MAIL**

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☐ **BY PERSONAL SERVICE**

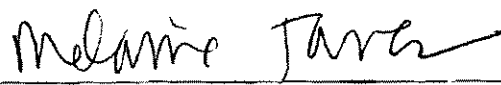
☐ I caused such envelope to be delivered to a commercial messenger service with instructions to personally deliver same to the offices of the addressee on this date.

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☐ By transmitting an accurate copy via facsimile to the person and telephone number as follows: **Charles B. Perkins (Fax No. 408-399-6683)**

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. Executed at Los Angeles, California on September 20, 2007.

MELANIE A. TAVERA
 (Name)


 (Signature)

Royal F. Oakes (080480), roakes@barwol.com
Michael A. S. Newman (205299), mnewman@barwol.com
BARGER & WOLEN LLP
633 West Fifth Street, 47th Floor
Los Angeles, California 90071
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Attorneys for Defendant
Metropolitan Life Insurance Company

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

LADONNA GEDECKE,

Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE
COMPANY, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO.:

CERTIFICATE OF SERVICE OF NOTICE
TO ADVERSE PARTY OF REMOVAL OF
ACTION TO FEDERAL COURT

Complaint Filed: June 13, 2007

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1 I, Melanie Tavera, certify and declare:
2

3 1. I am over the age of 18 years and am not a party to this action. My business address is
4 Barger & Wolen LLP, 633 W. Fifth Street, Los Angeles, California 90071, which is located in the
5 city, county and state where the mailing described below took place.
6

7 2. On September 20, 2007, I mailed (via First Class United States Mail) a copy of the
8 Notice to Adverse Party of Removal of Action to Federal Court dated September 20, 2007 (a copy
9 of which is attached to this certificate as Exhibit A), to counsel for Plaintiff.
10

11 I declare under penalty of perjury under the laws of the United States and certify that the
12 foregoing is true and correct. Executed this 20th day of September, 2007 at Los Angeles, California.
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14 
15 MELANIE A. TAVERA
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